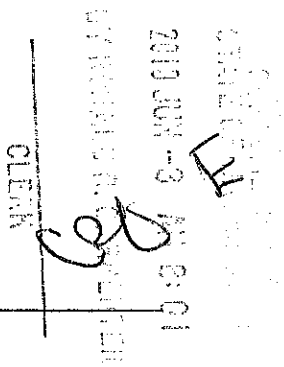
No. 83284-6

SUPREME COURT OF THE STATE OF WASHINGTON

IN RE THE PERSONAL RESTRAINT OF

TEDDY GLENN TALLEY

PETITIONER



PETITIONER'S RESPONSE TO SKAMANIA COUNTY'S RESPONSE TO PETITIONER'S MOTION FOR DISCRETIONARY REVIEW

June 1, 2010

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I. IDENTITY OF PETITIONER

The petitioner is Teddy Glenn Talley, appearing pro se.

II. INTRODUCTION

The Supreme court of the State of Washington ordered that Skamania County respond to this petioner's Motion for discretionary review and directed a response from this respondent addressing the court's concerns regarding RCW 9.92.151(1). It is the petitioner's position that the jail policies that deny him both good time and earned release credits violate both the statute referenced supra and equal protection and due process. Attachment 1 addresses the entire issue as regards the plain language of the RCW 9.92.151(1) as it applies to this respondent. It is herein incorporated in its entirety excluding the request for sanctions for the formely ex parte response of the respondent.

III. DECISION

Petitioner's motion is request for review of a decison made by the court of appeals, of the State of Washington, Division II, Case No. 39080-9-II, filed on June 27, 2009. In it the petitioner claimed that Skamania County Jail

violated his right to equal protect, due process and Washington State Statutes. The Supreme Court requested clarification of how RCW 9.92.151(1) would affect the award of good/earned time credits as regards this petitioner.

IV. ISSUES

1. Is RCW 9.92.151(1) properly before this court?

2. Has the respondent adequately responded to the court's direction?

3. In light of RCW 9.92.151(1) does the denial of earned/good time early release credits violate the rights of the petitioner and require their credit?

V. STATEMENT OF THE CASE

Petitioner stipulates as to substantial correctness of the respondent's statement of the case, except as appears below.

VI. ARGUMENT

A. Is RCW 9.92.151(1) properly before this Court?

While the suggestion that this statute is not properly before the court would have some merit if it was based on something other than wishful thinking backed by misdirected argument, it is clearly not based upon consideration of all the facts.

The Personal Restraint Petition brought by this petitioner properly raised the issue of a statute violation when the petition cited State v. Brown, 142 Wn.2d 67, 11 P.3d 818 which itself cited RCW 9.92.151(1) see page 32 PRP. While this might have been enough for a PRP brought pro se, it is the court's own request that appears to be the critical point.

In its ruling dated February 11, 2010, the Commissioner raised the issue of the questionableness of the respondent's policy that denies any early release credits to presentence jail detainees. See page 2 of this ruling. Therefore, it is the court itself that raised the issue and brought this statute before it, rendering the county's response meritless when considered in light of what the court directed.

B. Has the Respondent adequately responded to the Court's direction?

It would appear that the respondent merely avoided responding to the court's direction by claiming that the issue of the violation of RCW 9.92.151(1) was not properly before the court and therefore, according to them, did not require consideration on the merits.

Their argument in light of issue 1. argued supra, is without merit, in that it entirely ignores it's duty to ensure that it complies with all State statutes. Thus, it would appear that the respondent has not, in any meaningful way answered the courts direction.

C. In light of RCW 9.92.151(1) does the denial of earned/good time early release credits violate the rights of the petitioner and require their credit?

This appears to be the crux of the matter before the court. As argued in the "Final Brief and Motion for sanctions," the plain language of this statute requires that any program implemented by a jail apply in its entirety to pretrial detainees. See Attachment 1.

But as stated in the Petitioner's final brief, this entire process provided no opportunity for the petitioner to be heard during classification, which clearly violates any kind of due process. But much more important this policy by the county punishes without a conviction a pretrial detainee, something which has long been held to be unconstitutional. Wolfish v. Levi, 573 F.2d 118, 124 (2nd Cir. 1978) and Bell v. Wolfish, 441 U.S. 520, 60 L.Ed.2d 447, 461, 99 S.Ct. 1861 (1979).

Had the petitioner been able to afford bail, this entire situation could never have arisen. But, since he was unable to pay for counsel and pay for bail at the same time, he asserts that he wisely made the choice to get legal help, and this and this alone made him subject to the county's policy. It is reasserted that no legitimate penological interest is contained within the county's earned time policy. On examination is should be apparent, when the budget crisis is added into the equation no genuine issue could be raised for denying a pretrial detainee good time if his behavior was in conformance with that which was expected of him. Therefore without a behavioral issue the plain language of RCW 9.92.151(1) controls.

VII. CONCLUSION

The respondent Skamania County was directed to and provided an opportunity to address why their policy did not conform to RCW 9.92.151(1).

The undisputed facts in the case are (1) that the petitioner was denied good/earned time early release credits while he was a pretrial detainee. This was done without any meaningful due process and based upon the fact that bail was not affordable by the petitioner.

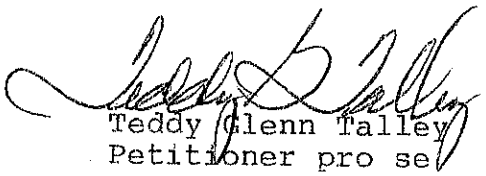
(2) That RCW 9.92.151(1) applies to them once they created a policy for awarding good time credits and the plain language of the statute requires that it apply to pretrial detainees such as the petitioner. (3) that the county did not apply it and as a direct consequence punished the petitioner because he could not afford bail.

Petitioner was therefore, based on these facts denied good time release credits as were granted to those who were classified differently. This is clearly a violation of equal protection and due process when it punished him by causing him to serve more time. Therefore, petitioner asks that this court either determine on its own that RCW 9.92.151(1) applies to him and order the Respondent to treat him the same as others by giving him the same credits.

Or that it order the case returned to the court of appeals so that it can make the determination and make the same order. Either of these remedies address the substaintial public interest that fair treatment and due process require. Suggesting that treating people fairly does not contain a substantial public interest makes a mockery of the constitutional

protections afforded pretrial detainees and the public interest in orderly fair administration of justice.

Respectfully Submitted,



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ATTACHMENT 1

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

SUPREME COURT No. 83284-6

PERSONAL RESTRAINT PETITION OF TEDDY GLENN TEDDY

FINAL BRIEF AND MOTION FOR SANCTIONS

May 9, 2010

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In so far as the respondents have not responded, even after the court granted them an extension of time, the petitioner offers the following to aid the court in its determination in this case.

Further, the petitioner asks the court to consider sanctions against the respondents for their failure to respond and for the resulting delay in this case.

1. WHAT IS THE CONTROLLING LAW REGARDING JAIL GOOD/EARNED TIME CREDITS?

It would appear that the controlling statute is RCW 9.92.151 (2004) where this statute states that "a felony ... conviction **may** [emphasis added] be reduced by earned release credits in accordance with procedures that shall be developed and promulgated by the corrections agency having jurisdiction." In the instance the Skamania County jail acknowledges that it has both jurisdiction and policies in place for granting earned release credits, but denies the application of these credits to this petitioner and those similarly situated, not by fault of the petitioner, but for merely being accused of a crime and unable to obtain bail.

The petitioner was a pretrial detainee where the presumption is that he be treated as innocent until proven guilty and imprisoned only for the failure to make bail implicated both equal protection and due process under clearly established law. See Rhem v. Malcolm, 507 F.2d 333, 336 (2nd Cir 1974); Bell v Wolfish, 441 U.S. 520, 60 L.Ed.2d 447, 461, 99 S.Ct. 1861 (1979).

Thus Skamania County jail appears to argue that the petitioner may be striped of eligibility for earned release credits soley (there is no other basis involved here as the petitioner has not incurred and infractions) on the basis of being accused of committing a serious crime, certainly nothing else.

In light of Bell, depriving the petitioner of earned time credits clearly increases the amount of incarceration actually served and consequently increases the punishment metted out to him without any kind of process where he could be heard before punishment is implemented as if the constitution did not exist. This clearly violated the due process clause of both the Fifth and Fourteenth Amendments of the United States Constitution and the similar provisions of the

Washington State constitution.

Further, RCW 9.92.151 goes on to state "The earned early release time **shall** [emphasis added] be for good behavior and good performance as determined by the correctional agency having jurisdiction." It is important to recall that no allogation of misconduct or misbehavior has been made, merely that jail policy punished those who cannot make bail and are accused of a serious crime. The petitioner did engage in good behavior which can also be contrued as good performance under the circumstances.

The Statute goes on to state that "Any program established pursuant to this section **Shall** [emphasis added] allow an offender to earn early release credits for presentence incarceration." It is here that the full intent of the legislature becomes evident (This also explains why the respondents remained silent). The Jail was mandated to allow the opportunity for all jail inmates to earn early release credits for presentence incarceration. Thus once it is established that the jail created a policy that allows anyone in its custody to earn early release credits; they must be applied to all.

As a fundamental principle of the jurisprudence of criminal law is the rule that a pretrial detainee retains all of the rights afforded unincarcerated individuals. Therefore, pretrial detainess may be subjected to only those "restrictions and principles" which "inhere in their confinement itself which are justified by compelling necessities of jail administration." Wolfish v. Levi, 573 F.2d 118, 124 (2nd Cir. 1978).

The standard of compelling necessity clearly does not apply here where the jail has no penological interest in denying earned release credits to a pretrial detainee. Especially absent any misbehavior on his part and using as it authority its own policy which is on its face in violation of RCW 9.92.151.

In conclusion: Both the constitution, in its demand for due process and the relevant RCW require the opportunity by pretrial detainees to earn early release credits and any other conclusion supports the arbitrary and carpricious punishment of otherwise deserving pretrial detainees. Therefore at minimum the petitioner should receive the same credits that DOC is required to credit him; if not then the twenty

percent (20%) that all other jail inmates earned. Fairness dictates that the proper award is what Skamania County routinely awards others situated as was this petitioner which is a credit of 20% for the time spent as a pretrial detainee.

Respectfully submitted,

Dated this 9th day of May, 2010.

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ATTACHMENT 2

RONALD R. CARPENTER
SUPREME COURT CLERK

SUSAN L. CARLSON
DEPUTY CLERK / CHIEF STAFF ATTORNEY

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February 11, 2010

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Honorable David Ponzoha, Clerk
Division II, Court of Appeals
950 Broadway, Suite 300
Tacoma, WA 98402-4454

Re: Supreme Court No. 83284-6 - Personal Restraint Petition of: Teddy Glenn Talley
Court of Appeals No. 39080-9-II

Clerk, Counsel and Mr. Talley:

Enclosed is a copy of the RULING signed by the Supreme Court Commissioner, Steven Goff, on February 11, 2010, in the above entitled cause. The Skamania County Prosecuting Attorney is designated as an additional Respondent in this matter.

A copy of the complete Supreme Court and Court of Appeals files are enclosed for the Respondent. The ruling directs Skamania County to file a response to the petitioner's motion for discretionary review by not later than March 15, 2010. Counsel for respondent are advised that should they need more time to file the response to the motion they may request additional time by motion.

Sincerely,

Susan L. Carlson
Supreme Court Deputy Clerk

SLC:daf
Separate Enclosures as stated.

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

In re the Personal Restraint of

TEDDY GLEN TALLEY,

Petitioner.

NO. 83284-6

RULING

Teddy Talley pleaded guilty to second degree murder in 2007. The trial court sentenced him to 123 months confinement. The Skamania County Jail certified 516 days of prejudgment confinement without any earned early release credit. Mr. Talley filed a personal restraint petition in this court challenging his projected early release date. I transferred the petition to Division Two of the Court of Appeals, which agreed that Mr. Talley may have been eligible for an additional two days of jail time. The court therefore granted the petition in part and remanded for correction or clarification. But the court rejected Mr. Talley's argument that he was entitled to earned early release credit for his jail time. Mr. Talley now seeks this court's discretionary review. RAP 16.14(c); RAP 13.5A(a)(1).

Mr. Talley claims that denying him early release credit for his jail time violates equal protection principles. Presentence offenders detained in county jail may earn early release credit. It is a violation of equal protection to deny credit only because a presentence detainee is unable to post bail. *See In re Pers. Restraint of Mota*, 114 Wn.2d 465, 472-74, 788 P.2d 538 (1990). But county jails are not obligated to adhere to Department of Corrections standards in awarding early release credit. *In*

re Pers. Restraint of Fogle, 128 Wn.2d 56, 63-64, 904 P.2d 722 (1995). Local jail policies resulting in a lower rate of early release credit are allowed in light of the heightened security risks posed by presentence detainees. *Id.* at 64-65. But jail programs for early release credit must "allow an offender to earn early release credits for presentence incarceration." Former RCW 9.92.151(1) (2004).

The Skamania County Jail awards earned early release credit to low or medium risk detainees who participate in programs and have been sentenced. Mr. Talley was apparently denied credit because he was deemed a high risk detainee ineligible to participate in programs and had not yet been sentenced. Under the jail policies, it appears Mr. Talley would have been denied credit even if he had been a low or medium risk detainee because of his presentence status.

The Department of Corrections responds that it properly relied on the jail certification. The department does not administer the county jail and does not draft the jail's early release credit policies. But aside from equal protection principles, the validity of a county jail policy that effectively denies any early release credit to presentence jail detainees may be questionable in light of former RCW 9.92.151(1). A response from the county may assist me in resolving this matter.

Skamania County is therefore directed to file a substantive response to the motion for discretionary review in this court by March 15, 2010, addressing the concerns related above. Mr. Talley may file a reply by not later than March 31, 2010. The Department of Corrections may file a supplemental reply to the county's response by that same date.

COMMISSIONER

February 11, 2010

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

In re the Personal Restaint of Teddy Glenn Talley	) No. 83284-6)) SERVICE BY MAIL)

I, Teddy Glenn Talley, did mail, via legal mail, a copy Petitioner's response to Skamania County's response to Petitioner's Motion for Discretionary Review and a copy of this service by mail to:

Ronald Carpenter
Clerk
Supreme Court
P. O. Box 40929
Olympia, WA 98504

Daniel McGill
Deputy Prosecutor
Skamania County Prosecutor
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Stevenson, WA 98648

Ronda Denise Larson
Attorney General's Office
Corrections Division
P. O. Box 40116
Olympia, WA 98504

The foregoing is true and correct and made under penalty of perjury pursuant to the laws of the State of Washington.

Dated this 1st day of June, 2010.

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